

No. 16188 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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VALLE LAWRENCE PROST,

Appellant,

vs.

MORRISON-KNUDSEN LIMITED,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

OCT 30 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES

MAXWELL KEITH, ESQ.,

Attorney at Law,

111 Sutter Street,

San Francisco 4, California,

For Appellant.

DOUGLAS B. HUGHMANICK;

EDWARD J. RUFF;

THELEN, MARTIN, JOHNSON & BRIDGES,

Attorneys at Law,

111 Sutter Street,

San Francisco 4, California,

For Appellee.





In the United States District Court for the Northern District of California, Southern Division

No. 37093

VALLE LAWRENCE PROST,

Plaintiff,

vs.

MORRISON-KNUDSEN LIMITED,

Defendant.

COMPLAINT ON COMMON COUNT AND  
FOR BREACH OF CONTRACT

Plaintiff complains of the defendant and for causes of action alleges:

I.

Plaintiff Valle Lawrence Prost is a resident of the City and County of San Francisco, State of California.

II.

Defendant Morrison-Knudsen Limited, is a wholly owned subsidiary of Morrison-Knudsen Company, Inc., a corporation, existing under the laws of the State of Delaware. Defendant exists under the laws of the Country of Australia, and does business in the City and County of San Francisco. It has an office at 120 Montgomery St., San Francisco. It enters into employment contracts with citizens of the United States at its office in San Francisco, for employment at Basrah, Iraq and elsewhere.

## III.

Jurisdiction is founded on diversity of citizenship. The matter in controversy exceed, exclusive of interest and costs, the sum of three thousand dollars.

## IV.

The defendant is indebted to the plaintiff in the sum of \$2,472.00, on account for work, labor and services of plaintiff, performed at the request of the defendant as a Pile Driver Foreman at Basrah, Iraq, during the period from July, 1956, to September, 1957; that defendants promised to pay to plaintiff the sum of \$2,472.00, therefor.

## V.

That defendant has not paid the same, not any part thereof.

As and for a Second Cause of Action Plaintiff Alleges:

## I.

Plaintiff realleges Paragraphs I, II, III, of said First Cause of Action and incorporates them herein as though fully set forth.

## II.

That on or about the Sixth day of July, 1956, plaintiff entered into a contract of employment with Morrison-Knudsen Limited, a corporation, wherein and whereby the defendant agreed to employ plaintiff as a Pile Driver Foreman for a period of two years or until the construction job at Basrah, Iraq,

was completed, at a monthly wage of \$900.00; that a copy of the contract is hereto attached, marked Exhibit A and made a part hereof.

### III.

That thereafter plaintiff went to Basrah, Iraq, under the terms of said contract and duly performed the terms of said contract, but said defendant has refused to allow plaintiff to continue his employment under the terms of said contract, and instead has prevented plaintiff from so doing by discharging Plaintiff without just cause on or about September 20, 1957.

### IV.

That there is now due and owing from the defendant to the plaintiff the sum of \$8,670.00 together with interest thereon at the rate of six per cent per annum from and after September 20, 1957, as plaintiff's salary for the uncompleted portion of his contract; and the sum of \$2,472.00 together with interest thereon at the rate of six per cent per annum from and after September 20, 1957, under the terms of Sections 6, 7 and 10 of said contract, all of which the defendant neglects and refuses to pay.

As and for a Third Cause of Action Plaintiff Alleges:

### I.

Plaintiff realleges Paragraphs I, II, III of said First Cause of Action and incorporates them herein as though fully set forth.

## II.

That on or about the Sixth day of July, 1956, the defendant orally promised the plaintiff employment at Basrah, Iraq, for a period of two years or until the completion of the defendant's construction project at Basrah, Iraq, at a wage of \$900.00 per month as a Pile Driver Foreman, and further promised him travel pay, transportation expenses, baggage expenses, per diem travel allowances, and return transportation fare.

## III.

That pursuant to said promises plaintiff went to Basrah, Iraq, and duly performed his work, services and labor at the special instance and request of defendant; but said defendant has prevented plaintiff from continuing his employment with defendant for said period of two years, and instead has discharged plaintiff without just cause on or about September 20, 1957.

## IV.

That there is now due and owing from the defendant to the plaintiff the sum of \$8,670.00, together with interest thereon at the rate of six per cent per annum, from and after September 20, 1957, as plaintiff's salary for the uncompleted portion of his employment at the special instance and request of defendants, and the sum of \$2,472.00, together with interest thereon at the rate of six per cent per annum, from and after September 20, 1957, as benefits due him for travel pay, transportation ex-

penses, baggage expenses, per diem allowance and return transportation, duly promised to plaintiff by defendant; all of which the defendant neglects and refuses to pay.

Wherefore, plaintiff prays judgment against the defendant for the sum of \$11,142.00, together with interest thereon at the rate of six per cent per annum from and after September 20, 1957, and for costs of suit incurred herein, and for such other and further relief as the court may deem just.

/s/ MAXWELL KEITH,  
Attorney for Plaintiff.

Trial by Jury Demanded.

EXHIBIT A

American Personnel  
Iraq  
Basra-Amara Road  
August 1, 1955

Morrison-Knudsen Limited  
Employment Contract

Name of Employee: Valle Lawrence Prost.  
Position Classification: Pile Driver Foreman.  
Monthly Salary Rate: \$900.00.  
Point of Hire: San Francisco, California.  
Date Salary to Commence: July 9, 1956.

Social Security Number: 497-09-8815.

Distribution of Salary: As Per Jobsite Allotment Schedule.

Person to Be Notified in Event of Emergency:

Name: Mrs. Francys M. Prost.

Relationship: Wife.

Address: 1080 Eddy St., Apt. 502, San Francisco, Calif.

Phone: WAlnut 1-3162.

(Above address will be considered as Employee's permanent address or the address of the person with whom Contractor may communicate concerning personal matters relating to Employee.)

This Contract made and entered into this sixth day of July, 1956, by and between Morrison-Knudsen Limited, hereinafter called "Contractor" and (First) Valle (Middle) Lawrence (Last name) Prost hereinafter called "Employee."

Witnesseth:

Whereas, the Contractor is engaged in the performance of a construction contract for the Government of Iraq Development Board, and desires to retain the services of the Employee for work in connection with said construction contract.

Now, Therefore, in consideration of the premises and the mutual covenants, agreements and conditions hereinafter contained, the parties do hereby agree as follows:



### 1. Employment Subject to Construction Contract

The contractor employs the Employee for certain services in the construction work to be performed by the Contractor under said construction contract and said employment is in all respects subject to the provisions of said construction contract and the reasonable requirements and interpretations thereof.

### 2. Place of Employment

The services of the Employee shall be performed in Iraq, at any one or more of the places therein which may be designated by the Contractor, or at the Contractor's option, at such other place or places outside said country which the Contractor may designate in connection with the performance of said construction contract.

### 3. Position

(a) The Employee represents that he is fully qualified without the benefit of any further training or experience to perform the duties of the position for which he is hired as specified above.

(b) If the Employee is used, for the convenience of the Contractor, in any equivalent or lower classification than that for which he is hired, to which he may hereafter be assigned by the Contractor, he will perform work in such classification to the best of his ability at the salary above specified. The Contractor may, however, reclassify the Employee to higher pay rate classification, but no payment of salary or wages will be made at such higher rate

until, in the opinion of the Contractor, the Employee has demonstrated his ability to perform the duties of the higher classification. At any time thereafter the Contractor may terminate such reclassification and return the employee to his original classification or equivalent thereof, whereupon the Employee shall be returned to his original rate of pay.

#### 4. Term of Employment

The term of the Employment Contract shall be the period during which the Contractor desires the services of the Employee in connection with construction or other work in Iraq; provided, however, that after twenty-four (24) months continuous employment from date of arrival of the employee at the jobsite, the Employee may terminate his employment hereunder by giving the Contractor written notice specifying the date on which he desires to terminate his employment which date shall not be less than fifteen (15) days after the date of delivery of notice to the Contractor; further provided that if, in the opinion of the Contractor, the services of the Employee are no longer required, this Contract shall, at the option of the Contractor, thereupon terminate; and further provided that in the event the Contractor's construction contract is completed or terminated before the expiration of said period, the Employment Contract shall thereupon terminate and the Contractor shall only be obligated to pay the Employee for services rendered to the date of such termination or completion and salary during the return trip to the United States as provided in



Section 6, and return travel expense as provided in Section 7(a).

5. Salary Payments and Other Compensation

(a) The Employee is employed at the monthly rate inserted above, payable as follows:

(1) Not less than the equivalent of twenty-five (\$25.00) dollars per month to be paid in Dinars (ID), at the jobsite, at the legal rate of exchange, it being expressly understood and agreed that in no event may the Employee exchange dollars into Dinars (ID) at other than the then current legal rate of exchange.

(2) The balance to be paid in the United States in lawful money of the United States of America.

(3) All salary shall be paid to the Employee once a calendar month following the end of the month in which said salary shall have been earned and the Iraq payrolls therefor shall have been received at the Contractor's United States office. Salary payments shall be subject to deduction of any indebtedness due to the Contractor by the Employee, including all deductions required by law, all deductions expressly provided for herein, and all deductions authorized by the Employee.

(b) If the Employee shall absent himself from his work or duties without just cause, as determined by the Contractor, he shall not be entitled to any salary, vacation credit or completion-term-of-service bonus for any such day or days of absence. For each

such day of absence 1/26th of the Employee's monthly salary will be deducted. Computations for all other purposes shall be based on the number of days in the particular calendar month or months.

(c) The Employee shall work such hours and shifts as may be required by the Contractor and any days off shall be so designated by the Contractor from time to time. Salary at the monthly rate inserted above shall be the whole salary agreed upon for the entire period of service under this Contract and payment to and acceptance thereof by the Employee shall constitute a full release to the Contractor.

(d) If the Employee complies with the provisions of Section 4 hereof, a vacation allowance of one (1) day for each twelve (12) calendar days employed at the jobsite will be granted to him. Such vacation payments will start on the date of termination of salary payments hereunder, and shall be at the Employee's average rate of pay during the period in which such vacation allowance accrues, excluding board and lodging or any allowance in lieu thereof.

## 6. Travel Pay

Travel pay will accrue while the Employee is en route, on direction of the Contractor, from the point of hire to the site of the work, on the return trip from the site of the work to the point of hire, and while awaiting transportation at the site of the work, or any point intermediate between the point of hire and the site of the work, or return. Such

travel pay shall be paid on the basis of the Employee's monthly salary rate. Travel pay shall not accrue during stopovers resulting from the Employee's voluntary act or disregard of the Contractor's instructions, or during deviations made for the Employee's personal convenience.

## 7. Transportation and Travel Expense

(a) Transportation—Except as provided in Sections 11 and 17, the Contractor shall furnish or pay for transportation from the point of hire to the site of the work, and, upon compliance with the provisions of Section 4 hereof, or upon medical release, as provided in Section 9 hereof, return to the point of hire. Transportation shall be by such method (air, rail, automobile or water), class, schedule and route as the Contractor shall designate or approve. If the Contractor authorizes the Employee to furnish any part of his transportation, reimbursement therefor will be made to the extent authorized upon the presentation by the Employee of such evidence of expenditure as the Contractor may require.

(b) Baggage—The Contractor shall pay the cost of transporting by the most economical and direct route not to exceed 350 pounds of personal baggage from the point of hire to the site of work and, on compliance with Section 4 hereof, return thereof to point of hire.

(c) Per Diem—The Contractor will pay a per diem for each day during which the Employee is in travel status pursuant to Section 6. Said per diem

shall be deemed payment of all expense, including without limitation, meals, laundry, room and tips, but excluding transportation, and shall be in the amount of \$1.00 per day while traveling by boat, and \$10.00 per day inside the United States, or \$10.00 per day outside the United States, while traveling by any other carrier and during periods of layover, provided, however, that if the mode of transportation selected by the Contractor shall include meals at no cost to the Employee, or if the Contractor shall elect to furnish meals to the Employee while en route, without expense to the Employee, the per diem allowance herein provided for shall not be paid to the Employee. Any additional payments made by the Contractor for the account of the Employee in connection with such expenses shall be deducted from any payments due to the Employee under this Employment Contract. No per diem will be paid during stopovers or deviations resulting from the Employee's voluntary act or disregard of the Contractor's instructions.

#### 8. Jobsite Facilities

Board, lodging and medical services required for conditions resulting from the hazards of the employment will be furnished by the Contractor at the site of the work without cost to the Employee. The Employee shall use the facilities in regard to board, lodging and such medical services furnished by the Contractor unless the Employee is given a cash allowance in lieu of being furnished board and lodging, at the Contractor's option.

9. Compensation for Disability or Death Due to Accident

(a) The Contractor will provide by insurance for securing payment of benefits to the Employee or his dependents under the provisions of the Workmen's Compensation Act of the State where the Employee is hired.

(b) Any wage payment made to the Employee for a period during which he is entitled to Workmen's Compensation benefits by reason of temporary total, permanent total, temporary partial, or permanent partial disability shall be deemed an advance payment of compensation insurance benefits due the Employee, but only to the extent of such benefits due for the period of disability during which wages are paid.

(c) Should the health of the Employee become so impaired during employment hereunder as to justify the Contractor, in its opinion and based upon such medical examination as the Contractor may require, returning the Employee to the point of hire, by reason of injuries or illness arising out of and in the course of employment under this Employment Contract and through no fault of the Employee, the Employee will be returned to such point of hire at the Contractor's expense as herein provided. In such event, the travel pay and per diem provisions hereof shall remain applicable until the Employee is returned to the point of hire, or, if the Employee does not proceed to the point of hire, until returned to the point of hire, or, if the Em-



ployee does not proceed to the point of hire, until returned to the continental United States, at which time all obligations of the Contractor hereunder (except with respect to the payment of Workmen's Compensation Insurance benefits, if applicable), shall cease.

#### 10. Return Transportation Fund

(a) The Contractor may withhold as a return transportation fund, \$300.00 per month from the Employee's monthly earnings until a reserve of \$900.00 shall have been set aside, which fund shall be paid to the Employee upon the completion of twenty-four (24) months' service hereunder; provided further, that if the Employee quits or is discharged for cause prior to the completion of said period of service, then all monies due the Employee at the time of quitting or discharge shall be added to and become a part of said return transportation fund.

(b) If the Employee quits or is discharged for cause prior to the completion of said period of service, the Contractor may apply such fund to the payment on behalf of the Employee of his costs of living, transportation and other expense incidental to the Employee's return to the United States; and any part of said fund not so used shall be paid over to the Employee. If this Employment Contract is terminated by the Contractor prior to the completion of said period of service for reasons other than those covered by Sections 11 and 17, the fund shall be paid to the Employee upon such termination.

## 11. Termination of Employment

If, prior to the completion of twenty-four (24) months' continuous service hereunder, the Employee quits or this Employment Contract is terminated by the Contractor for cause, all salary, travel allowance and other payments and compensation shall cease as of the time of quitting or discharge, and the Employee shall thereafter be liable for and shall pay his own costs of living and his own return transportation cost and expense, and no further obligation shall exist on the part of the Contractor to the Employee. Termination for cause shall include, but not be limited to, the following: lack of ability of the Employee to perform the work of the classification for which he is hired; bad temper; the immoderate use of alcoholic drinks; the use of narcotics; the contraction or recurrence of venereal disease; carelessness, insubordination; incompetence; failure to travel as scheduled by the Contractor; failure or refusal to work; trading in currencies other than through established official channels; any misrepresentation or concealment of a material fact for the purpose of securing this Contract, or in connection with any medical examination relating to it; request by the government or the party for whom the Contractor is operating, that the Employee be dismissed; subversive activity; or any other act of misconduct.

## 12. Medical Examination

(a) Before departure from the point of hire or from the port of embarkation, the Employee shall

submit to physical examination, vaccinations and inoculations as may be required by the Contractor. It is expressly understood that all statements made by the Employee in connection with such examination shall be deemed material to and a part of the Employment Contract, and any misrepresentation by the Employee in such statements shall relieve the Contractor from any obligation under this Employment Contract. If the Employee does not, prior to departure from the port of embarkation, undergo at his own expense such dental or medical treatment as may have been prescribed upon any physical examination provided for herein, this Employment Contract may be terminated for cause.

(b) The Employee shall secure all necessary permits and papers required for his departure from the United States. All incidental preliminary expenses such as medical examinations, passport, visas, vaccinations and photographs will be paid for by the Contractor upon the Employee's submitting such evidence of payment as may be required by the Contractor.

### 13. Working Conditions

(a) The Employee understands that persons with or without union affiliations may be employed on the work, and agrees that this practice will not affect his obligations under this Employment Contract.

(b) The Employee may be required to instruct, direct and work with native labor, which circum-



stances shall not entitle the Employee to a foreman's or other supervisory classification.

(c) The Employee shall respect and obey all Iraq laws, rules and regulations and shall never interfere with the Iraq political or religious affairs either directly or indirectly, and shall comply with such other rules and regulations as the Contractor may establish from time to time with respect to the personnel employed by the Contractor. The Employee agrees to work and live in harmony with his coworkers employed on the work, and at all times to conduct himself in an orderly manner, with due regard to the comfort and convenience of his coworkers. The Employee shall not engage directly or indirectly, in any other employment, service or business whatever, nor shall he take part in local politics.

#### 14. Claims

The Employee agrees that he will, within thirty (30) days after any claim (other than a claim for compensation insurance) arises out of or in connection with the employment provided for herein, give written notice to the Contractor of such claim, setting forth in detail the facts relating thereto and the basis for such claim, and that he will not institute any suit or action against the Contractor in any court or tribunal in any jurisdiction based on any such claim prior to six (6) months after the filing of the written notice of claim hereinabove provided for, or later than two (2) years after such filing. Any action or suit on any such claim shall

not include any item or matter not specifically mentioned in the proof of claim above provided. It is agreed that in any such action or suit, proof by the Employee of his compliance with the provisions of this Section shall be a condition precedent to any recovery under this Employment Contract.

### 15. Personal Property

(a) The Employee shall provide all clothing and personal effects necessary to enable him to perform this Employment Contract. An inventory of clothing and other effects shall be prepared by the Employee and submitted to the Contractor before the Employee embarks from the United States, which inventory shall contain an itemized valuation of the articles listed thereon.

(b) The Contractor shall be responsible for the loss or damage to the Employee's clothing or personal effects while in transit by a public or common carrier, or while being transported by company operated transportation. At all other times during the term of the Employment Contract, the Contractor shall not be responsible for the loss of or damage to the Employee's clothing or personal effects, except where such loss or damage results solely and only from fire, storm or other catastrophe. In no event shall the Contractor be responsible for the loss or destruction of clothing and personal effects beyond a total valuation of \$200.00, nor beyond the inventory and valuation set out by the Employee, as provided in Section 15(a) hereof, which ever may be the lesser.

## 16. Disposition of Employee's Remains

In the event of the death of the Employee while outside the continental limits of the United States during the term of this Contract, the Employee hereby authorizes the Contractor to make appropriate disposition, as shall be deemed best by it under prevailing circumstances, of the body and personal effects of the Employee.

## 17. Disclosure of Information

The Employee is charged with knowledge that disclosure of any information to any person not entitled to receive it, or failure to safeguard any such information that may come within his knowledge, may subject him to immediate dismissal for cause.

## 18. Personal Income Tax

Personal income tax will be assessed on each Employee's earnings by the Government of Iraq in accordance with the tax laws of Iraq. The Contractor will withhold monies from each Employee's earnings every month in an amount which complies with the aforesaid tax laws.

## 19. Final Settlement

On the termination of the Employment Contract and payment to the Employee of all amounts due him hereunder, the Employee shall execute and deliver to the Contractor upon a form prepared by it, a receipt for said sums and a release of all claims,

except such claims as may have been submitted pursuant to the provisions of Section 14 hereof, and which may remain unsettled. It is understood that in preparing the final record of employment on termination, the Employee shall submit to such physical examination, both at the jobsite and after his return to the United States, as the Contractor may deem necessary for the preparation of such record herein required.

## 20. Extent of Agreement

The Employee certifies to the Contractor that he has read the foregoing Employment Contract, that he fully understands its terms and conditions, that the foregoing terms and conditions constitute his entire agreement with the Contractor, that no promises or understandings have been made other than those stated above, and it is specifically agreed by the parties hereto that this Employment Contract shall be subject to modification only by written instrument signed by both the Contractor and the Employee.

This Employment Contract executed by the parties named herein as of the date first specified at San Francisco, California, United States of America.

MORRISON-KNUDSEN  
LIMITED,

/s/ [Indistinguishable.]

/s/ DOROTHY CURCELL,

Witness.

Employee's Signature:

/s/ V. L. PROST.

/s/ W. F. BUSCHING,  
Witness.

[Endorsed]: Filed March 11, 1958.

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[Title of District Court and Cause.]

### NOTICE OF MOTIONS

To Valle Lawrence Prost and to Maxwell Keith,  
His Attorney:

Please Take Notice that the undersigned will bring Motions to Dismiss Complaint, for Summary Judgment and to Strike, on for hearing before the Law and Motion Department of the above-entitled Court in the United States Courthouse and Post Office Building, 7th and Mission Streets, San Francisco, California, on Monday the 9th day of June, 1958, at 9:30 o'clock a.m. or as soon thereafter as counsel can be heard.

DOUGLAS B. HUGHMANICK,  
EDWARD J. RUFF,  
THELEN, MARRIN, JOHNSON  
& BRIDGES,

By /s/ DOUGLAS B. HUGHMANICK.

Receipt of Copy acknowledged.



[Title of District Court and Cause.]

MOTIONS TO DISMISS COMPLAINT, FOR  
SUMMARY JUDGMENT AND TO STRIKE

Defendant Morrison-Knudsen Limited, a corporation, appearing specially herein, and only for the purpose of this action, and for no other purpose whatsoever, and not intending to submit to the jurisdiction of the United States of America or the State of California, or of this Court, except for the purposes of this action only, and not intending in submitting to jurisdiction for the purposes of this action to do business in the United States of America or the State of California, or otherwise bring itself within the jurisdiction of this Court, moves the Court to dismiss the above-entitled action on the following grounds:

I.

Said Complaint, and each of the causes of action thereof, fails to state a claim upon which relief can be granted.

II.

Said Complaint, and each of the causes of action thereof, fails to state a claim upon which relief can be granted in that the written notice of claim required by Section 14 of the written contract upon which said causes are based, attached as Exhibit A to said Complaint, is not alleged to have been given.

III.

Said Complaint fails to state a claim within the jurisdiction of the court in that claims made in

paragraphs IV of the Second and Third Causes of Action thereof for the sum of \$8,670 are for plaintiff's salary for the uncompleted portion of the contract term, whereas, Section 4 of said contract provides that defendant may terminate plaintiff's term of employment at any time it desires; the amount remaining in controversy is less than \$3,000 exclusive of interest and costs.

### Motion for Summary Judgment

Said defendant further moves the court for entry of Summary Judgment for said defendant in respect to the Third Cause of Action of said Complaint on the following grounds:

#### I.

Said Complaint, and each of the causes of action thereof, is based upon a purported breach by defendant of a written Employment Contract, a copy of which is attached to plaintiff's Complaint as Exhibit A. As is shown by the affidavit of Douglas B. Hughmanick on file herein, and the deposition of plaintiff Valle Lawrence Prost, the oral "promise" alleged in the Third Cause of Action of said Complaint was made in connection with oral negotiations made prior to and in contemplation of the execution by plaintiff and defendant of the written Employment Contract, and said oral "promise" cannot properly be made the basis of a claim distinct or separate from that made in the Second Cause of Action upon the written contract. Accordingly, defendant's motion for Summary Judgment

ment in respect to the Third Cause of Action of the Complaint should be granted.

### Motion to Strike

Said defendant further moves the court to strike the following allegations of said Complaint on the grounds that said allegations are immaterial.

(1) The words "for a period of two years or until the construction job at Basrah, Iraq, was completed" appearing in paragraph II of the Second Cause of Action of said Complaint at lines 22 and 23 of page 2 thereof.

(2) The words "the sum of \$8,670 together with interest thereon at the rate of 6% per annum from and after September 20, 1957, as plaintiff's salary for the uncompleted portion of his contract" appearing in paragraph IV of the Second Cause of Action thereof at lines 3, 4 and 5 of page 3 of the Complaint.

(3) All the allegations of paragraphs I, II, III and IV of the alleged Third Cause of Action of said Complaint.

Wherefore, said defendant prays as follows:

1. That the Complaint be dismissed or, in the alternative, that defendant's Motion to Strike be granted.

2. That summary judgment be entered for defendant in respect to the Third Cause of Action of said Complaint.



3. That defendant be awarded its cost herein incurred and such other and further relief as the court may deem proper.

Dated: May 8, 1958.

DOUGLAS B. HUGHMANICK,  
EDWARD J. RUFF,  
THELEN, MARRIN, JOHNSON  
& BRIDGES,

By /s/ DOUGLAS B. HUGHMANICK,  
Attorneys for Defendant.

[Endorsed]: Filed May 12, 1958.

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

State of California,  
City and County of San Francisco—ss.

Douglas B. Hughmanick, being first duly sworn,  
deposes and says:

I am an attorney at law duly licensed and admitted to practice in all of the courts of the State of California and before the above-entitled court. I am associated with the law firm of Thelen, Marrin, Johnson & Bridges, attorneys for the defendant in this action.

On April 8, 1958, I took the deposition of plaintiff Valle Lawrence Prost. The original of the deposition is on file herein and it contains a true and correct transcript of the questions asked of the plaintiff and of his replies and answers to the same. The original of the deposition is on file herein and is, by this reference, incorporated herein as though set forth in full.

The plaintiff testified under oath during the taking of said deposition that his first contact with defendant was in June of 1956 when he called on one of the employees or representatives of the defendant for the purpose of obtaining employment. Subsequent to the time of this first meeting there were several additional meetings between plaintiff and employees of defendant.

The last such meeting was on July 6, 1956, at which time a written Employment Contract was signed by plaintiff whereunder he was employed subject to terms and conditions therein contained, to render services as a pile driver foreman for defendant in Iraq. A true copy of the contract is attached to plaintiff's Complaint as Exhibit A.

Three days after the meeting of July 6th, plaintiff departed for Iraq and, on his arrival there, rendered the services he was employed to perform until the termination of his employment on September 20, 1957.

During the meetings which occurred prior to the time the Employment Contract was signed, plain-

tiff testified that he was told by employees or representatives of defendant that if he accepted employment in Iraq he would be required to sign a written employment contract. Any and all statements or promises made to plaintiff in regard to the term of his employment were, by his own testimony, made prior to the time the written contract was signed and were made during negotiations and discussions which antedated the execution of the contract.

Plaintiff further testified that during the period of his employment in Iraq, the terms of his employment were governed by the written contract of employment and not by any oral promises made to him.

No statements or promises were made to plaintiff orally or in writing in regard to the term of his employment after the written contract of employment was signed.

Section 20 of said contract provides as follows:

“20. Extent of Agreement

“The Employee certifies to the Contractor that he has read the foregoing Employment Contract, that he fully understands its terms and conditions, that the foregoing terms and conditions constitute his entire agreement with the Contractor, that no promises or understandings have been made other than those stated above, and it is specifically agreed by the parties hereto that this Employment Con-

tract shall be subject to modification only by written instrument signed by both the Contractor and the Employee.”

/s/ DOUGLAS B. HUGHMANICK.

Subscribed and sworn to before me this 9th day of May, 1958.

[Seal] /s/ ABBY E. WIGNEY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires March 19, 1962.

[Endorsed]: Filed May 12, 1958.

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[Title of District Court and Cause.]

### ORDER GRANTING MOTION TO DISMISS

This matter having been argued, briefed and submitted for ruling,

It Is Ordered that defendant's motion to dismiss be, and the same hereby is, Granted.

/s/ GEORGE B. HARRIS,  
United States District Judge.

June 19, 1958.

Snyder vs. Bechtel International, No. 32714.

[Endorsed]: Filed June 19, 1958.

United States District Court for the Northern  
District of California, Southern Division  
Civil Action No. 37093

VALLE LAWRENCE PROST,  
Plaintiff,  
vs.

MORRISON-KNUDSEN LIMITED,  
Defendant.

ORDER OF DISMISSAL AND JUDGMENT

The motion of defendant herein for the dismissal of this action having heretofore been argued, briefed and submitted to the Court for ruling and it appearing to the Court that the jurisdiction of this Court is invoked upon the grounds of diversity of citizenship alone, and it appearing that damages equal to the amount of \$3,000 could not be proven under the allegations of the Complaint;

It Is, Therefore, Ordered, Adjudged and Decreed that the plaintiff's Complaint herein be and the same is hereby dismissed.

Dated: July 9th, 1958.

/s/ GEORGE B. HARRIS,  
United States District Judge.

Approved as to form:

/s/ MAXWELL KEITH,  
Attorney for Plaintiff.

THELEN, MARRIN, JOHNSON  
& BRIDGES,  
Attorneys for Defendant.

[Endorsed]: Filed July 9, 1958.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

Notice is hereby given that Valle Lawrence Prost, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of Dismissal and Judgment entered in this action on July 9, 1958.

/s/ MAXWELL KEITH,  
Attorney for Plaintiff.

[Endorsed]: Filed August 7, 1958.

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[Title of District Court and Cause.]

### DOCKET ENTRIES

1958

Mar. 11—Filed complaint and issued summons (jury demanded).

May 12—Filed notice & motion by deft. to dismiss, for summary judgment and to strike, June 9, 1958.

June 9—Hearing on motion for summary judgment. Further hearing continued to June 16, 1958.

June 16—Ordered after hearing, motion for summary judgment and to dismiss, submitted.

June 19—Filed order granting motion of defendant to dismiss.



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June 20—Mailed copies order to counsel.

July 9—Filed judgment and order dismissal.

Aug. 7—Filed notice of appeal by plaintiff.

Aug. 8—Mailed notices.

Aug. 14—Filed appellant's designation of record on appeal.

Sept. 12—Filed appeal bond in sum \$250.00.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for appellant:

Excerpt From Docket Entries.

Complaint.

Notice and Motion to Dismiss, for Summary Judgment, etc., and Affidavit of D. B. Hughmanick, Order Granting Motion to Dismiss.

Order of Dismissal and Judgment.

Notice of Appeal.

Appeal Bond.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of September, 1958.

[Seal]

C. W. CALBREATH,  
Clerk.

By /s/ MARGARET BLAIR,  
Deputy.

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[Endorsed]: No. 16188. United States Court of Appeals for the Ninth Circuit. Valle Lawrence Prost, Appellant, vs. Morrison-Knudsen Limited, Appellee. Transcript of Record. Appeal From the United States District Court for the Northern District of California, Southern Division.

Filed: September 15, 1958.

Docketed: September 22, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 16188

VALLE LAWRENCE PROST,

Appellant,

vs.

MORRISON-KNUDSEN LIMITED,

Appellee.

APPELLANT'S STATEMENT OF POINTS ON  
APPEAL AND DESIGNATION OF THE  
RECORD

STATEMENT OF POINTS ON APPEAL

Pursuant to Rule 17 (6) of the Rules of the above-entitled Court, the following is a concise statement of the points on which appellant intends to rely on its appeal herein:

1. The District Court erred in ruling that it had no jurisdiction of the subject matter in that the contract of employment between the parties allowed the defendant-appellee to limit its damages only to contract benefits and that plaintiff-appellant could not, as a matter of law, prove damages over Three Thousand Dollars (\$3,000.00).

In support of these points on appeal, appellant designates those portions of the record for printing

as are set forth in the attached Stipulation Re Designation of Record between the parties.

Respectfully Submitted,

/s/ MAXWELL KEITH,  
Attorney for Plaintiff-Appel-  
lant.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 22, 1958.